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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1945.

MARY LOIS McINTOSH,

Petitioner,

Vs.

CHARLES WIGGINS and MISSISSIPPI
VALLEY TRUST COMPANY, a Corpora-
tion, as Executors u/w of Ella L. Wiggins,
Deceased, and

No. 1047.

CHARLES WIGGINS and MISSISSIPPI
VALLEY TRUST COMPANY, a Corpora-
tion, as Trustees Under Certain Trusts
Established by Ella L. Wiggins During
Her Lifetime,

Respondents.

PETITIONER'S REPLY BRIEF.

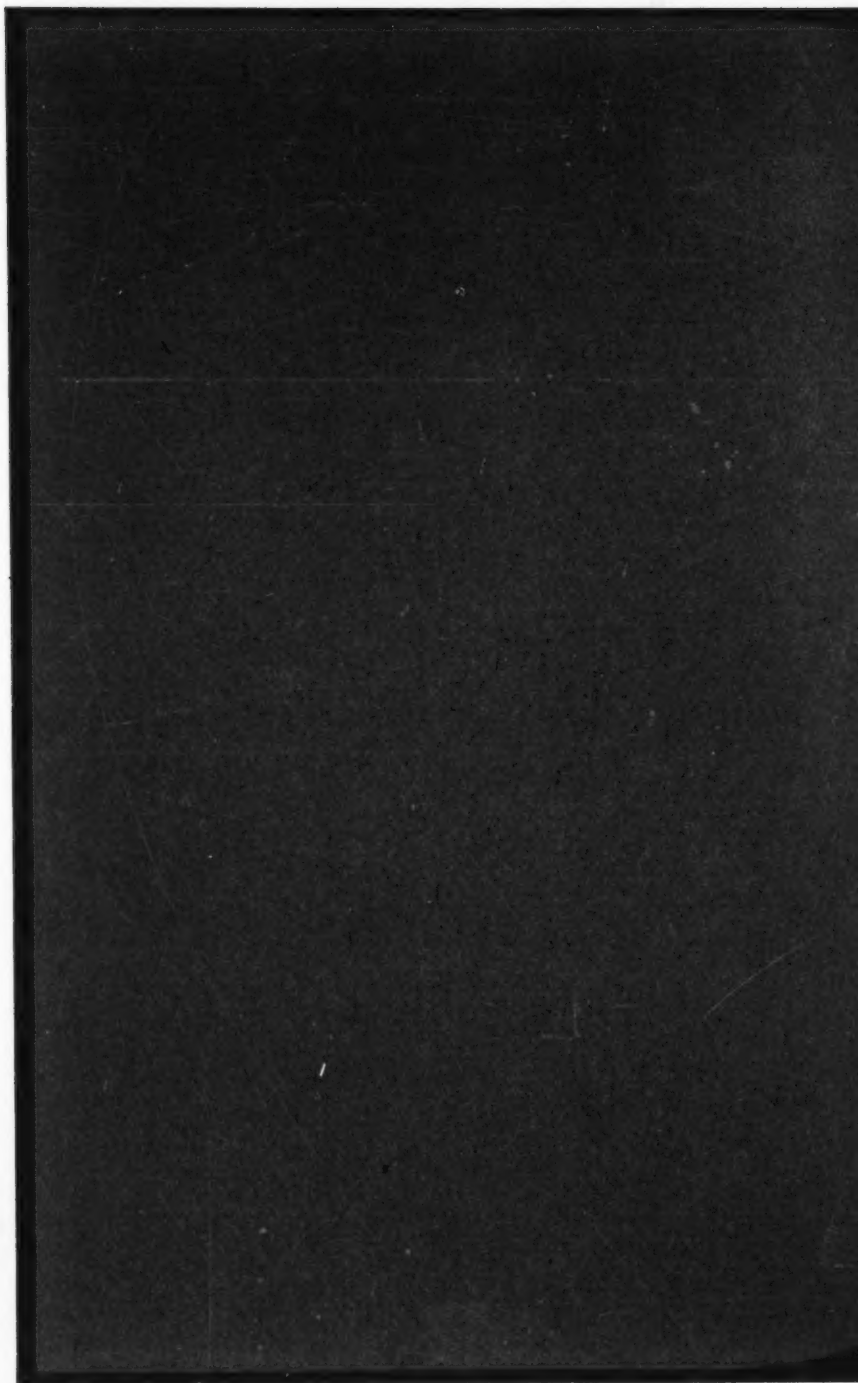
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Of Counsel:

JOHN E. CRAMER, JR., and

CLAUDE I. BAKEWELL.



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PETITIONER'S REPLY BRIEF.

In this case the Supreme Court of Missouri actually decided a Federal question. Its judgment as rendered could not have been given except for the Federal judgments which the Court held to be res adjudicata.

That the Supreme Court of Missouri rested its judgment herein solely upon the Federal judgments is established

by the substance and reasoning of its opinion and by the conclusion announced, in view of the following facts:

1) Under the settled law of Missouri:

“* * * proceedings of a court without jurisdiction are a nullity and its judgment without effect either on the person or property” (In Re Buckles, 331 Mo. 405, 53 S. W. [2d] 1055, p. 1057).

Such is the law as declared by this Court (Valley v. Northern Fire Insurance Company, 254 U. S. 348, p. 354).

2) The Supreme Court of Missouri had expressly adjudged that in the original suit the State Circuit Court had lacked jurisdiction to adjudge the interests of prospective contingent remaindermen before such interests had come into existence (R., pp. 120 and 875, 172 and 876).

That adjudication nullified the recital in the original decree. It left it “without effect on the person or property.” Therefore, such nullity could not be conclusive as a decree of the State Circuit Court.

The Supreme Court of Missouri did not hold it to be conclusive per se. It held that the Federal judgments having adjudged that the State Circuit Court had possessed jurisdiction; that such Federal judgments were in full force and effect and that by force of the Federal judgments, as judgments sustaining a non-existent jurisdiction, this Petitioner was bound by them and that, because of such Federal judgments, this Petitioner was bound by a recital in the decree of the State Circuit Court, even though, in fact, the State Circuit Court had lacked any jurisdiction of the subject matter of such recital.

The substance of the ruling is that Petitioner is bound by the Federal judgments as *res adjudicata*. Such substantive ruling led to the conclusion stated in words, that the Petitioner was bound by the recital in the original decree—not because such recital in the decree of the State

Circuit Court was itself *res adjudicata*, but because the Federal judgments were *res adjudicata*, as between these parties, of the validity of the recital in the decree of the State Circuit Court, even though such recital was in itself void.

The Supreme Court of Missouri did not hold the void recital in the decree of the State Circuit Court to be *res adjudicata*.

It could not have ruled such recital itself to be *res adjudicata*, since it had previously ruled it to have been void for lack of jurisdiction and hence "without effect on the person or property."

It held, as stated in the opinion, that the Federal judgments were in full force and effect; that they had adjudged that the State Circuit Court had possessed jurisdiction; that they were *res adjudicata* of the issue of jurisdiction; and that by the force and effect of the Federal judgments, this Petitioner was bound by a recital which, *per se*, had been a nullity.

The opinion shows upon its face that the Supreme Court of Missouri could not have rendered the judgment which it did render without deciding that the Federal judgments were conclusive on the question of the jurisdiction of the State Circuit Court and on the question of fraud.

The Supreme Court of Missouri was determining title to real estate. It had previously adjudged that such title had vested in this Petitioner, Mary Lois McIntosh, and Elizabeth Kennard on August 10, 1928 under the will. It had nullified (for lack of jurisdiction) the recital in the decree which would have given that title to Ella L. Wiggins on August 10, 1928.

When the Supreme Court of Missouri gave effect, as *res adjudicata*, to the Federal judgments, which had sustained a nonexistent jurisdiction in the State Circuit

Court, as opposed to its own decision to the contrary, it decided a Federal question in a manner contrary to the decisions of this Court.

When it denied to this Petitioner her title under the will, as construed by it, because of such Federal judgments, it decided a Federal question in a manner contrary to the decisions of this Court.

When a Federal Court had adjudged title to real estate under a will, and a supervening decision by the highest Court of a State had adjudged such title under the will in a contrary manner, then the prior Federal judgment was not *res adjudicata* in the Federal Court itself. Such Federal Court should follow the supervening decision by the State Court, which had construed the will, even though such supervening State decision had not finally adjudicated the title as between the parties, in such wise as to be binding upon every Court before which that title might be subsequently discussed.

This Court has specifically so decided in *Messenger v. Anderson*, 225 U. S. 436, p. 445. See also *Blair v. Commissioner*, 300 U. S. 5, p. 9.

In the *Blair* case a Federal Court had adjudged title. Subsequently, a State Court adjudged title to the contrary. In a subsequent case in a Federal Court the first Federal judgment was pleaded as *res adjudicata*. This Court said:

“The decision of the state court upon these questions is final. * * * To derogate from the authority of that conclusion and of the decree it commanded, so far as the question is one of state law, would be wholly unwarranted in the exercise of federal jurisdiction” (300 U. S., p. 10).

Under the law as declared by this Court a Federal judgment with respect to title to real estate is not *res adjudicata* even in the Federal Courts, when such Federal

judgment is opposed to a supervening decision to the contrary by the highest Court of a State.

Since the decisions of State Courts with respect to title to real estate are exclusive, supreme and controlling, necessarily such Federal judgments cannot be *res adjudicata* in the Courts of a State, when such Federal judgments are opposed to a supervening decision to the contrary with respect to title by the highest Court of that State.

Respondents Admit That Under the Decisions of the Missouri Courts the State Circuit Court Had Lacked Jurisdiction of the Subject Matter of the Recital in the Original Decree.

In their brief here Respondents state that the Federal Court and the State Courts "reached substantially opposite conclusions * * * on the question of jurisdiction" (Respondents' Brief, p. 22).

Respondents show that the Federal Court adjudged that the State Court had possessed jurisdiction. But the State Courts reached the opposite conclusion.

The argument in their brief is that the Federal judgments are *res adjudicata*.

With their admission that the State Courts had adjudged a lack of jurisdiction, necessarily their argument must rest solely upon the effect of the Federal judgments.

That is a Federal question, which was decided by the Court below and without which decision its judgment could not have been rendered and its decision of that Federal question is contrary to the decisions of this Court and contrary to the principles declared by this Court which establish the supremacy, finality and conclusiveness of State decision with respect to State law, particularly with respect to the title to real estate.

Respondents Admit That the State Court Vacated the Void Recital in Its Decree.

Respondents state:

“The decree of the trial court * * * vacated the disputed paragraph of the decree and enjoined the defendants from claiming the property under the provisions of the Federal judgments and rendered a money judgment for the amount of the disputed income with interest totalling \$386,247.94” (Respondent’s Brief, p. 26).

Those facts, admitted by Respondents, present this question: When a State Circuit Court has entered a decree and conveyance containing a recital which is void for lack of jurisdiction of its subject matter, and has vacated such void recital, is such action of the State Circuit Court correct and proper or does a State Circuit Court lose its inherent and summary jurisdiction to vacate a void provision in its own decree and conveyance merely because a Federal Court had adjudged that the State Circuit Court had made such a decree and conveyance?

The record shows and Respondents admit that this Petitioner has never had an opportunity for any hearing with respect to her title or her right to acquire her property under the will.

Respondents admit that the Courts of Missouri adjudged that in the original suit the Court lacked jurisdiction to adjudge the devolution of future and contingent remainders.

Hence Respondents admit that this Petitioner, as a prospective contingent remainderman, had no opportunity to be heard in the original suit.

Respondents’ brief shows that the Federal judgments sustained the decree of the State Circuit Court in the original suit, as *res adjudicata* (Respondents’ Brief, pp. 12 and 18) and, so holding, the Federal Court refused to hear

Petitioner with respect to her title and her right to acquire that title under the will.

Respondents admit, therefore, that this Petitioner has been deprived of her property and of her title under the will without any hearing or any opportunity to have been heard in any Court with respect to her right to acquire that property under the will.

The Supreme Court Did Not Hold the Original Decree to Be Valid.

The Supreme Court of Missouri did not hold the recital in the original decree to be valid. It held merely that because of the force and effect of the Federal judgments such recital was binding upon Petitioner.

By its own decisions the Supreme Court of Missouri has established that a contingent remainderman under a will has no right which may be asserted or defended in any Court until the death of the life tenant (*Bradley v. Goff*, 243 Mo. 103; *Case v. Sipes*, 280 Mo. 118; *Dillinger v. Kelley*, 84 Mo. 561).

It has specifically ruled that a decree against a remainderman, before the life estate had terminated,

“would violate the Constitution of the United States, for it would deprive a person of his property without due process of law—without giving him a day in Court” (*Hall v. French*, 165 Mo., p. 442).

The original decree was entered in 1923 before the life estate had terminated.

The Supreme Court of Missouri has adjudged that under the will the estate of this Petitioner as a contingent remainderman vested in her on August 10, 1928.

Therefore, the Supreme Court of Missouri could not have ruled that this Petitioner had had her day in Court in the original suit. Under its own decisions such a ruling

would have deprived this Petitioner of her property without due process of law in violation of the Constitution of the United States.

Respondents Admit That in the Original Case the Circuit Court Did Not Decide the Matter Covered by the Recital in Its Decree.

Respondents' brief shows that in the original case the Court **adjudged** that the daughters took life estate only with contingent remainders over. It shows that the decree contained the provision with respect to the devolution of the future and contingent remainders, but the record shows that such provision had not been the result of any decision by the Circuit Court, but had been written into the decree by counsel (R., p. 211).

The record also shows that that provision so written by counsel contradicted the intention of the testator as stated by the same counsel in their briefs in the Supreme Court of Missouri in the same case (160 S. W. [2d], p. 711).

For the reasons stated and because of the importance of the Federal questions involved and the erroneous decision of such Federal questions by the Court below, and because this Petitioner has been deprived of her property under the will without any opportunity for a hearing, Petitioner prays that the Petition will be granted and that the judgment of the Supreme Court of Missouri will be reversed and that the judgment of the Circuit Court of Missouri, which protected the integrity of its own judicial process, in accordance with the law as declared by this Court, be affirmed.

As an impelling reason for review by this Court we quote from the opinion of Judge Harvey Johnsen of the Eighth Circuit Court of Appeals, who said that the Su-

preme Court of Missouri itself had branded the recital in its original decree as

“* * * unconscionable and a legal perversion.

* * * * *

“The situation therefore is one in which it must be conceded that a gross injustice has been perpetrated * * * by an unconscionable decree and one legally indefensible ‘by all the rules of construction.’ There necessarily is a legitimate clamor for a remedy, as a matter of elemental justice and public respect for the courts” (123 Fed. [2d] 316, p. 323).

Respectfully submitted,

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Of Counsel:

JOHN E. CRAMER, JR., and

CLAUDE I. BAKEWELL.

April 24, 1946.